

E-FILED 6/24/2009

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SHAUN MILLER,

No. C09-02078 HRL

Plaintiff,

v.

**INTERIM ORDER RE APPLICATION
TO PROCEED IN FORMA PAUPERIS**

SAN JOSE STATE UNIVERSITY; ROSE LEE;
ANDRE L. BARNES; OFFICER BARNES;
SANTA CLARA COUNTY; SANTA CLARA
VALLEY HEALTH & HOSPITAL SYSTEM;
ALEX CHYOMY; MEDICAL EMPLOYEE
DOES 1-20 of SANTA CLARA VALLEY
ADULT CUSTODY HEALTH SERVICES;
EDWARD FLORES; DEPUTY DOES 1-20 of
THE DEPARTMENT OF CORRECTION,

Defendants.


Before the court is plaintiff's application to proceed *in forma pauperis* ("IFP application"). A district court may authorize the commencement of a civil action *in forma pauperis* if the court is satisfied that the would-be plaintiff cannot pay the filing fees necessary to pursue the action. 28 U.S.C. § 1915(a)(1). However, it has long been the rule that "the affidavit as to the poverty of the applicant is to be made by himself and not by another, even his counsel." Pothier v. Rodman, 261 U.S. 307, 309, 43 S. Ct. 374 (1923); see also generally Covington v. Cole, 528 F.2d 1365, 1371 (5th Cir. 1976) ("Serious arguments can be made that an affidavit supporting a motion to proceed IFP must be signed by the purported pauper

1 himself.”); United States ex rel Barnes v. Briley, 294 F. Supp.2d 931, 936 (N.D. Ill. 2003)
2 (same).

3 In the instant case, plaintiff has not signed the IFP application. Instead, his attorney
4 filled out the application and signed it “on information & belief” on plaintiff’s behalf.
5 Accordingly, the application is deemed incomplete. Plaintiff is directed to re-submit an
6 application signed by himself under penalty of perjury.

7 SO ORDERED.

8 Dated: June 24, 2009


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10 HOWARD R. LLOYD
11 UNITED STATES MAGISTRATE JUDGE
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5:09-cv-2078 Notice has been electronically mailed to:

Keith G. Jordan keith@jordanlawfirm.net

Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.